

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) between the City of Homer (City), Homer Foundation (Foundation), and the Homer Playground Project (HoPP) is made this ____ day of June, 2011.

This MOA is entered into with respect to planning, coordination, fundraising, fund management, construction, and maintenance of a new/replacement playground at Karen A. Hornaday Hillside Park ("Project"), described as:

The Homer Playground Project will involve the community in designing, funding, and constructing a play space unique to the character and nature of Homer at Karen Hornaday Park. The final design will reflect community values and children's imagination and involvement, and will bring the community into a conversation about the condition and needs of Homer's park system. The Project will utilize the services of playground professionals and will lead the community in a visioning process that will result in an innovative design that integrates natural play elements with traditional playground equipment and structures. The draft Project timeline is June 2011-September 2012 and the estimated Project budget is \$200,000. If this fundraising goal is not met, the playground design will be amended to reflect a reduced budget.

A. Recitals

1. The City of Homer owns and maintains the property known as Karen A. Hornaday Hillside Park, which includes the site of the proposed playground, and will have access to the property at all times.
2. The Homer Foundation is a community foundation which has the ability to serve as fiscal agent for local public-interest organizations that lack legal tax-exempt non-profit status.
3. The Homer Playground Project is an ad hoc organization which has formed for the specific purpose of creating a new playground at Karen Hornaday Park.
4. This MOA is intended to establish the relationship between the City, the Foundation, and HoPP in regard to the proposed Project and constitutes a permit which specifically authorizes the activities described herein subject to the restrictions and obligations provided within this Memorandum of Agreement.
5. Nothing in this agreement obligates the City or the Foundation to provide funding for the proposed Project.

B. Responsibilities of the Homer Playground Project

1. HoPP will take the lead role in soliciting community input in the design of the new playground, soliciting assistance from professional playground consultants, raising the necessary funds for engineering, design, and construction of the new playground, and coordinating community volunteers throughout the Project.
2. HoPP acknowledges that the City of Homer has authority and jurisdiction over property owned by the City, including Karen Hornaday Park, and will exercise final approval of construction plans for the proposed Project.
3. HoPP will serve as the contracting authority and will be responsible for following generally accepted contracting procedures to ensure due diligence, performance standards, quality assurance, project oversight and reviews, and to establish payment schedules.

4. HoPP will provide regular updates to the Homer Parks and Recreation Advisory Commission and seek input and guidance from City staff including the City Manager, Parks Maintenance Coordinator, Parks and Recreation Coordinator, Public Works Director, and Special Projects Coordinator.
5. HoPP will transfer all funds raised and/or donated for the proposed Project to the Homer Foundation (fiscal agent for the Project).
6. The proposed Project will be operated consistent with the Foundation's tax-exempt status in accordance with its Articles of Incorporation, policies, and applicable tax regulations.
7. HoPP will utilize funds raised and/or donated for the proposed Project exclusively for the Project, including (but not limited to) website design and maintenance, other communications and public relations, fundraising events, and playground planning, design, and construction.
8. HoPP will provide bookkeeping assistance to the Homer Foundation, in the management of funds collected and expended for the purpose of accomplishing the proposed Project.
9. HoPP will comply with all requirements imposed by an organization that has provided funding for the Project.
10. HoPP will prepare all reports regarding the Project that have been reasonably requested by the Foundation and/or by any organization that has provided funding for the Project.
11. HoPP will provide the Foundation with a final written report that includes a summary of how the funds were used, as well as a short summary of the community-based process.
12. HoPP will acknowledge the support of the Homer Foundation throughout the course of the Project.
13. Upon Project termination, HoPP will provide the Foundation with a fee equal to 2.5 percent of revenues received for the Project, not to exceed \$5,000, less an amount equal to the interest earned on the funds in the Account during the Project period.

C. Responsibilities of the Homer Foundation

1. The Homer Foundation, as a 501C3 organization, agrees to be the fiscal agent for HoPP and to assume administrative, financial, and legal responsibility for purposes of the requirements of charitable funding to organizations and individuals.
2. Funds received by the Foundation for the Project will be held in a cash account ("Account") and not comingled with the Foundation's investment portfolio. The name on the Account will be the Homer Playground Project.
3. The Foundation will disburse funds from the Account at the request and documentation of HoPP for purposes consistent with the goals of the proposed Project.
4. With bookkeeping assistance from HoPP, the Foundation will maintain all financial records relating to the Project according to generally accepted accounting principles, retain records as long as required by law, and make records available to auditors as required by law.

D. Responsibilities of the City of Homer

1. In the event that a contribution is made to the City of Homer for the proposed Karen Hornaday Park playground project, the City will transfer the funds to the Homer Foundation for deposit into the account established for HoPP.
2. The City authorizes certain City staff to attend HoPP meetings and provide limited assistance in achieving the goals of the proposed Project. In particular, the Parks Maintenance Coordinator, Community Recreation Coordinator, and Special Projects Coordinator will be encouraged to attend meetings and provide assistance as time allows. The Public Works Director and City Manager will also keep apprised of progress and provide input and guidance as necessary.
3. The City will provide HoPP with authorization to proceed with construction of the proposed playground when the City has reviewed and approved, in writing, any agreement for construction and/or design services and when the City determines, in writing, that the public has had adequate opportunity for input in project scope and design and that plans and specifications for the project meet required safety and durability standards.
4. The City will authorize certain City employees to participate in the construction phase of the playground project, as time allows.
5. The City will assume ownership of the new playground structures and provide maintenance of the play area equipment and grounds for the long-term benefit of the community.

E. Indemnification

It is agreed that the Foundation and HoPP will indemnify and hold the City harmless for any damages or other loss arising from any fault of that party, its representatives, employees, volunteers, agents, and/or assigns or from the negligent or criminal conduct of that party, its representatives, employees, volunteers, agents, and/or assigns.

F. Authorized Agents

1. The Authorized Agent for the Homer Playground Project is Miranda Weiss, who will act as principal coordinator of the Project's day-to-day business with the Homer Foundation and the City of Homer.
Contact information: Miranda Weiss
P.O. Box 1498
Homer, AK 99603
907-299-5550
mirandaweiss@gmail.com

2. The Authorized Agent for the Homer Foundation is Joy Steward.

Contact information: Joy Steward, Executive Director
The Homer Foundation
P.O. Box 2600
Homer, AK 99603
Phone: 907-235-0541; Fax: 907-235-2021
jsteward@homerfund.org

3. The Authorized Agent for the City of Homer is Walt Wrede.

Contact information: Walt Wrede, City Manager
City of Homer
491 E. Pioneer Avenue
Homer, AK 99603
Phone: 907-435-3102; Fax: 907-235-3148
wwrede@cityofhomer-ak.gov

4. The parties to this agreement will notify each other in writing of any changes in Authorized Agents or contact information.

G. Termination

This Agreement will terminate if any of the following events occur:

1. The Homer Playground Project fails to perform or observe any other covenant of this Agreement and this failure remains unresolved 30 days after notice in writing.
2. The Homer Foundation requests that HoPP cease activities that it deems might jeopardize its tax-exempt status and HoPP fails to comply within a period of 10 days.
3. Upon expiration of 30 days after any of the parties to this Agreement has given written notice of its intent to terminate the Agreement.

In the event a new qualified 501C3 fiscal agent assumes responsibility for the project, the balance of the project assets held by the Foundation will be transferred to the new fiscal agent. A new fiscal agent may not assume responsibility for the project without the City's written approval. In the event the project is terminated, the balance of the assets held by the Foundation will be maintained by the Foundation and used to meet the intent of the original Project or to support City playground upgrades or maintenance.

H. Effective Date and Term: This Agreement will take effect when signed by the Authorized Agents of the City of Homer, Homer Foundation, and Homer Playground Project and will remain in effect until terminated as described in Section F or upon completion of the proposed Project and acceptance of the new playground by the City of Homer.

I. Severability: Any provision or clause of this Agreement that is deemed invalid by a court of otherwise by law shall not affect the validity of the remainder of the Agreement.

J. Governing Law; Jurisdiction: This Agreement shall be governed by the laws of the State of Alaska. Any legal action brought in court regarding this Agreement shall be filed with the trial courts of Alaska, Third Judicial District, Kenai. It is understood and agreed by the parties that consultation and negotiation are the preferred first option for resolving all disputes.

K. No Partnership: No provision of this Agreement shall be construed to create a partnership or joint venture or any other arrangement where one party would be in any way responsible for debts, losses, or liabilities of another party to the Agreement.

L. Waiver: A waiver by any of the parties to this Agreement shall not be construed as a continuing waiver of a provision, or a waiver of other provisions of the Agreement. Any waivers of the Agreement conditions shall be done in writing and signed by all parties.

M. Entire Agreement: This Agreement constitutes the only agreement, and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement, including any Exhibits hereto, may not be amended or modified, except in writing and signed by all parties to this Agreement.

N. Acceptance

CITY OF HOMER: _____	HOMER FOUNDATION: _____	HOMER PLAYGROUD PROJECT: _____
Walt Wrede City Manager	Joy Steward Executive Director	Miranda Weiss Co-Chair

NOTARY ACKNOWLEDGEMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The forgoing instrument was acknowledged before me this ____ day of _____, 2011, by Walt Wrede, City Manager of the City of Homer, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The forgoing instrument was acknowledged before me this ____ day of _____, 2011, by Joy Steward, Executive Director of the Homer Foundation, a 501C3 community foundation, for and on behalf of the foundation.

Notary Public in and for Alaska
My commission expires: _____

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The forgoing instrument was acknowledged before me this ____ day of _____, 2011, by Miranda Weiss, for and on behalf of the Homer Playground Project.

Notary Public in and for Alaska
My commission expires: _____